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No. 99-

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IN THE

Supreme Court of the United States

MAPLE LANES, INC. d/b/a FRANKIES and
KENNETH J. GEORGE, SR.,

Petitioners,

v.

MEL MESSER, individually and in his official capacity as
SHERIFF OF OGLE COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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32 pp

QUESTIONS PRESENTED

I. Whether the Rooker-Feldman Doctrine deprives a Federal District Court of subject-matter jurisdiction over a defamation action brought under 42 U.S.C. § 1983, alleging loss of a property interest in a business that sold alcoholic beverages when the businesses license had been the subject of prior administrative action which was ultimately resolved by an agreement between the parties.

II. Whether a cause of action is set forth under the stigma-plus defamation analysis established in *Paul v. Davis,* 424 U.S. 69, 424 U.S. 693 (1975), is satisfied when the deprivation complained of is the proximate cause of the defamation complained of, despite being the result of action taken by a second actor.

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Petitioners, Maple Lanes Incorporated, doing business as Frankies, and Kenneth George Sr. respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Maple Lanes, Inc. v. Messer*, 186 F.3d 823 (7th Cir. 1999) and is reproduced in the appendix (B). The opinion of the District Court in *Maple Lanes, Inc. v. Messer*, 98 S. Ct. 50138 is unreported and is reproduced in the Appendix (C).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered judgment in this matter on July 27, 1999. (Appendix B) The Court of Appeals denied a timely petition for rehearing en banc on August 18, 1999. (Appendix D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty or property without due process of law. . . ."

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

235 Illinois Compiled Statutes 5/7-11 provides:

> Judicial review. All final administrative decisions of the State Commission under this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant thereto. Judicial review may be requested by any party in interest, including but not limited to the local liquor control commissioner. The term "administrative decision" is defined in Section 3-101 of the Code of Civil Procedure.

STATEMENT OF THE CASE

This petition raises two issues. The first question is whether proceedings in a state administrative agency which are resolved by agreement of the parties deprives the federal courts of subject-matter jurisdiction under the Rooker-Feldman doctrine because the federal action would constitute impermissible review of the state administrative agency

action. The second question, which goes to the heart of the Plaintiffs' cause of action, is whether the resulting loss of business, including the suspension of a liquor license, resulting from a defamatory statement made by a county sheriff is a sufficient deprivation of a property interest to state a cause of action under 42 U.S.C. § 1983. The District Court for the Northern District of Illinois, Western Division dismissed this case because the Plaintiff's loss of the liquor license was accomplished through administrative action by the city of Rochelle, Illinois rather than by the Defendant directly. The District Court had jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The United States Court of Appeals for the Seventh Circuit (having jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1295) did not reach the merits of this argument and instead raised the issue of subject-mater jurisdiction sua sponte and ordered this case dismissed under the Rooker-Feldman doctrine.

In early May of 1996, Mel Messer, the sheriff of Ogle County, made the following statement to the Rochelle News-Leader: "We are targeting businesses that supplement their income with cocaine and drug sales like we did with Frankie's in Rochelle." Maple Lanes, Inc. d/b/a Frankies (Maple Lanes) never supplemented its income through drug sales. The Rochelle News-Leader published this statement on May 9, 1996. One result of the publication of this statement was that, on or about June 1, 1996, the City of Rochelle revoked Maple Lanes', liquor license. The revocation was upheld by the Illinois Liquor Commission. Maple Lanes contested the revocation in state court and the matter was resolved by agreement.[1] The agreement reinstated

1. The record is devoid of any mention of the administrative proceedings and the agreement that resolved this matter because, (Cont'd)

Maple Lanes license effective on the sale of the business. Maple Lanes was sold on July 25, 1997 and reopened in August of 1997. The ultimate effect of Sheriff Messer's defamatory statement was the complete destruction of the Plaintiffs' ability to do business, which included the loss of the liquor license.

REASONS FOR GRANTING THE WRIT

I.

THIS PETITION SHOULD BE GRANTED BECAUSE IMPORTANT QUESTIONS REGARDING THE POWER OF THE FEDERAL COURTS ARE INVOLVED WHICH REQUIRE CLARIFICATION BY THIS COURT.

The petition for writ of certiorari should be granted because the Seventh Circuit's dismissal of this action raises serious questions about the subject-matter jurisdiction of the federal courts. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), this Court set forth the proposition that only the Federal District Courts lack the power to sit as courts of review over the courts of the states. *Id.* at 416. Only the

(Cont'd)
until the Seventh Circuit raised the issue of subject-matter jurisdiction sua sponte at oral argument, these proceedings were not relevant to anything at issue in the case. At oral argument, the Seventh Circuit questioned Petitioners' counsel about these proceedings. Petitioners' counsel answered to the best of his ability and stated incorrectly that he believed the license had not yet been reinstated, but as neither party had considered these proceedings relevant, was unable to provide much information. Petitioner had different counsel during these proceedings. The Seventh Circuit based its dismissal on this information.

Supreme Court may exercise such power. *Id.* This is true even though a question of federal constitutional law is involved. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983). If a constitutional claim is inextricably intertwined with a state court judgment, the federal courts lack subject matter jurisdiction over the claim. *Id.* at 483 n.16. The Seventh Circuit's decision in the present case represents an unwarranted extension of the Rooker-Feldman doctrine. *See Maple Lanes, Inc. v. Messer*, 186 F.3d 823 (7th Cir. 1999) (Appendix B). This extension limits the power of the federal courts in a manner inconsistent with the principles announced in these two cases. *Cf. Penzoil Co. v Texaco Inc.*, 481 U.S. 1, 18 (1987) (Scalia, J., concurring) (finding Rooker-Feldman no bar when plaintiff sought injunction against enforcement of a state court judgment by attacking the constitutionality of the state law enforcement provisions). As such, the Seventh Circuit's decision conflicts with the decision of this Court and clarification is needed to determine the scope of the jurisdiction of the Federal District Courts. Three aspects of the lower courts decision suggest that Rooker-Feldman was inappropriately applied here. First, the doctrine was applied following a settlement between the parties rather than following a state court judgment. Second, the parties involved in the settlement were not the parties involved in the action before the District Court. Finally, the subject matter of the earlier proceeding was limited to the revocation of Maple Lanes' liquor license while the action in the District Court involved a deprivation that was considerably broader. These problems will be addressed sequentially.

The dispute between Maple Lanes and the City of Rochelle regarding the revocation of the Plaintiffs' liquor license was disposed of through an agreement restoring the

license contingent upon Plaintiffs' sale of the business. At the time settlement occurred, Plaintiffs were challenging the revocation in Illinois state court. The revocation had been approved by the Illinois Liquor Commission previously. The Seventh Circuit correctly noted that "[i]f a licensee is unsuccessful in his pursuit of review of the revocation of the license according to the procedures set forth in the [Liquor Control] Act, the revocation of the license results in a final state court judgment against the licensee." *Maple Lanes*, 186 F.3d at 825. In the present case, the matter was disposed of by agreement after the initial administrative hearing but before Maple Lanes exercised its right to judicial review. *See* 235 Ill. Comp. Stat. 5/7-11. Since the matter was settled while mandatory review of the administrative decision was pending, there was no judgment of final judgment of a state judicial body to review in this case. As these proceedings were resolved by settlement, there is no state judgment for a District Court to review, hence the Rooker-Feldman doctrine is inapplicable.

Second, and more importantly, the earlier administrative action involved parties not involved in the present action. In the earlier actions the contestants were Maple Lanes and the City of Rochelle. Presently, the parties are Maple Lanes and Ogle County Sheriff Mel Messer. This Court has recognized that Rooker-Feldman is no bar when a party not involved in a previous state court proceeding seeks redress in the Federal Courts. *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994). In *Johnson*, the United States filed an action which was consolidated with a suit brought by private plaintiffs, the subject matter of which had been previously litigated in the Florida courts. *Id.* at 1002. This court held that Rooker-Feldman did not bar the Untied States' participation because they had not been a party to the state court action.

Id. at 1006. Since it was not a party, this Court reasoned, it was "in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding." *Id.* The same reasoning applies to the present case, even though in this case it is the Defendant who was not a party to the prior proceeding. Any state court judgment in these circumstances would not have been directed to the Defendant. Maple Lanes is asserting a cause of action against Mel Messer for the first time in the District Court. A finding of liability in the District Court against Mel Messer would not constitute review of the prior proceedings simply because those proceedings did not involve the claim asserted here. Had the Maple Lanes prevailed in the state action instead of settling the matter, Maple Lanes would still have a cause of action against the Defendant because the Defendant's actions resulted in damages beyond those that were the subject of the liquor license revocation proceedings and settlement.

Finally, Rooker-Feldman does not deprive the District Court of subject-matter jurisdiction because the deprivation complained of in the present case is much broader than the mere loss of a liquor license. The Seventh Circuit erroneously conclude that an award of damages for the deprivation worked by the Defendant would be the functional equivalent of an action to reinstate Maple Lanes's liquor license. *Maple Lanes*, 186 F.3d at 825. The lower court reasoned that relief in the form of monetary damages equal to the value of the liquor license would effectively reverse the state court judgment upholding the revocation of the liquor license. *Id.* at 826. This reasoning ignores the fact that the deprivation complained of in the action under 42 U.S.C. § 1983 is much broader than the mere loss of the license. The right to pursue a trade, business or profession constitutes a property interest under Illinois law. *Coldwell Banker Residential Real Estate*

Service of Illinois v. Clayton, 105 Ill.2d 389, 397, 475 N.E.2d 536, 540 (Ill. 1985) (A liquor license is also a property interest under Illinois law. *See Katris v City of Waukegan*, 498 F. Supp. 48, 53 (N.D. Ill. 1980)). The loss of the ability to conduct business at Maple Lanes exceeded the ability to sell liquor there. Having the reputation of being a place where drugs are, or were, sold adversely impacts upon all business that could have been conducted out of that establishment. The incongruity between the damages in the two actions is further demonstrated by the fact that even if Maple Lanes' liquor license had not been revoked or if it had been reinstated, the defamatory statement still would have had a tremendous adverse impact upon Mr. George's business. People in a small mid-western town will not patronize an establishment with such a reputation. These damages are far broader than the loss of the liquor license, hence, imposing liability upon Mel Messer would not constitute a reversal of any state court judgment regarding the license (particularly in this case, where the earlier proceeding ended in a settlement).

In *Feldman*, the Plaintiffs had received a state proceeding "which fully encompassed the constitutional and statutory issues involved." *Feldman*, 460 U.S. at 470. In the present case, Maple Lanes received no such hearing. Mel Messer was not a party, and the damages complained of were of a different order. The earlier matter ended in settlement so no state court judgment is involved. The Rooker-Feldman doctrine is therefore not applicable in this case. This Court should grant this petition in order to delineate the contours of the Rooker-Feldman doctrine and define the limits of the authority of the federal courts in these matters.

II.

THIS PETITION SHOULD ALSO BE GRANTED BECAUSE IT WOULD GIVE THIS COURT AN OPPORTUNITY TO RESOLVE WHETHER A DEPRIVATION PROXIMATELY CAUSED BY THE DEFENDANT BUT WORKED BY A SECOND ACTOR CONSTITUTES THE DEPRIVATION OF A PROPERTY INTEREST SUFFICIENT TO STATE A CAUSE OF ACTION FOR DEFAMATION UNDER THE STIGMA PLUS ANALYSIS, A MATTER WHICH HAS RECEIVED INCONSISTENT TREATMENT BY THE COURTS OF APPEALS.

Granting this petition would allow this Court to clarify the requirements of the stigma-plus analysis for maintaining an action under 42 U.S.C. § 1983 for defamation by a state actor. In the present case, the defamatory statement complained of was published by Sheriff Messer while the resulting deprivation was worked in two ways. First, the defamation caused a separate actor, namely the City of Rochelle, to revoke the Petitioners' liquor license. Second, the statement complained of prevented the Petitioner from maintaining a previously established business in the city. Both constitute property interests under Illinois law. *See Coldwell Banker*, 105 Ill.2d at 397, 475 N.E.2d at 540; *Katris*, 498 F. Supp. at 53. The District Court, focusing on the first of these deprivations, dismissed this case because the City, rather than the Sheriff, actually revoked Maple Lane's license. (Appendix C). The question to be resolved here is whether deprivations of protected interests that are proximately caused by a state actor, although effectuated by a different actor, are sufficient to satisfy the requirement that a plaintiff must allege damages beyond mere stigma to one's

reputation to maintain such an action under 42 U.S.C. § 1983. *See Paul v. Davis*, 424 U.S. 693, 708-709 (1976). If a constitutional violation can be attributed to a state actor through the principles of proximate causation, that actor should be liable for the resulting deprivation regardless of the particular manner in which the deprivation was worked. Under Illinois law, proximate cause means that natural and probable consequences, including intervening causes that the wrongdoer should have reasonably anticipated, flowing from the wrongdoer's actions. *Hylin v. United States*, 715 F.2d 1206, 1216 (7th Cir. 1983).

Varying interpretations by the Circuit Courts creates confusion in this area. The District Court relied on *Margoles v. Tormey*, 643 F.3d 1292 (7th Cir. 1981), in dismissing this case. (Appendix C). In *Margoles*, the Seventh Circuit held that the denial of a medical license by an Illinois agency was not sufficient to satisfy the stigma-plus requirements against Wisconsin officials who provided false information to the Illinois agency. *Id.* at 1297; *see also Fleury v. Clayton*, 847 F.3d 1299, 1231 (7th Cir. 1988). Thus in the Seventh Circuit, as the District Court found, if the actual deprivation is worked by a second party, the deprivation does not satisfy the stigma-plus requirements. The Eighth Circuit seems to disagree. *See American Family Life Assurance Co. v. Teasdale*, 733 F.2d 559, 565 (8th Cir. 1984). Conversely, in *San Jacinto Savings & Loan v. Kacal*, 928 F.2d 697 (5th Cir. 1991), the Fifth Circuit gave the stigma-plus analysis a much broader reading.

> This circuit has consistently applied *Paul* by requiring that a section 1983 claimant show a stigma *plus* an infringement of some other interest. *See, e.g., Connelly v. Comptroller of the*

> *Currency*, 876 F.2d 1209, 1215 (5th Cir. 1989); *Geter v. Fortenberry*, 849 F.2d 1550, 1557 (5th Cir. 1988); *Vandygriff*, 711 F.2d at 1221. To fulfill the stigma aspect of the equation, a claimant must "prove that the stigma was caused by a false communication." *Codd v. Velger*, 429 U.S. 624, 97 S. Ct. 882, 51 L. Ed. 2d 92 (1977). This Court has found sufficient "stigma" only in concrete, false factual representations or assertions, by a state actor, of wrongdoing on the part of claimant. *See Connelly*, 876 F.2d at 1215. To establish the "infringement" portion of the "stigma plus infringement" test, a claimant must establish that the state sought to remove or significantly alter a life, liberty, or property interest recognized and protected by state law or guaranteed by one of the provisions of the Bill of Rights that has been "incorporated."

The *San Jacinto* court accepted a decline in patronage, directly caused by police action, as a deprivation capable of satisfying the stigma-plus analysis. *San Jacinto*, 928 F.2d at 703. The contention that the decline in business was caused by the "free choice of private citizens" was expressly rejected due to its direct causal relationship to the police action complained of. *Id.* The present case raises a similar question, given the causal relationship between Sheriff Messer's statement and the resulting action by the City of Rochelle; however this question can not be addressed under the Seventh Circuit's interpretation of the stigma-plus analysis.

The nature of this particular cause of action is more amenable to a proximate cause analysis than the test adhered to by the Seventh Circuit. Defamation will rarely, if ever, be

the sole cause of the deprivation complained of in any given case. The mere speaking of the words damages only reputation, which is not a constitutionally protected interest. *Paul v. Davis*, 424 U.S. at 709. Nevertheless, the defamation may have foreseeable consequences upon a protected interest. If the statements are of the right character, they may destroy a plaintiff's business or foreseeably cause another agency to take adverse action. If the deprivation complained of is worked by the actual defamer, it becomes unnecessary to refer to the defamation at all and the deprivation may be attacked directly as a denial of due process. *See San Jacinto*, 928 F.2d at 704. The ultimate result of requiring the same actor to be both the defamer and the sole cause of the constitutional deprivation is to eliminate defamation as a cause of action under 42 U.S.C. § 1983. Such a result would be unfortunate because, as in the present case, defamatory statements may have foreseeable results which deny citizens due process of the law. Granting this petition for certiorari would allow this Court to address this important question of federal law.

CONCLUSION

This case presents this Court with the opportunity to address two important questions of federal law. First, it allows the Court to address the jurisdictional limits of the power of the federal courts as delineated by the Rooker-Feldman doctrine. Second, the Court can resolve whether deprivations proximately caused by a state actor are sufficient to state a cause of action under 42 U.S.C. § 1983. For the foregoing reasons, the Petitioners respectfully request that this petition for certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — AMENDED JUDGMENT AND MINUTE ORDER FORM OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION DATED SEPTEMBER 10, 1999

UNITED STATES DISTRICT COURT
Northern District Of Illinois
Western Division

Case Number: 98 C 50138

Maple Lanes, Inc., et al.

v.

Mel Messer, et al.

AMENDED JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to the order of the Seventh Circuit, on remand this case is dismissed for lack of jurisdiction.

Michael W. Dobbins, Clerk of Court

_____

Susan Wessman, Deputy Clerk

Date: 9/10/1999

Appendix A

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge:
Philip G. Reinhard

Case Number:
98 C 50138

Date:
9/10/1999

Case Title:
Maple Lanes, Inc., et al. vs. Mel Messer, et al.

Docket Entry:

* * *

(10) ■ [Other docket entry] Pursuant to the order of the Seventh Circuit, on remand this case is dismissed for lack of jurisdiction.

* * *

✓ Notices mailed by judge's staff.

✓ Mail AO 450 form.

✓ Copy to judge/magistrate judge.

SW courtroom deputy's initials

2 number of notices

9/10/1999 date mailed notice

SW mailing deputy initials

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED JULY 27, 1999

In the

United States Court of Appeals

For the Seventh Circuit

No. 98-4158

MAPLE LANES, INC., d/b/a FRANKIE'S and KENNETH J. GEORGE, SR.,

Plaintiffs-Appellants,

v.

MEL MESSER, individually and in his official capacity as SHERIFF OF OGLE COUNTY and OGLE COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Western Division.
No. 98-C-50138—**Philip G. Reinhard**, *Judge*.

ARGUED APRIL 19, 1999—DECIDED JULY 27, 1999

Before POSNER, *Chief Judge*, COFFEY and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. On May 9, 1996, Mel Messer, Sheriff of Ogle County, Illinois, issued the following statement to the *Rochelle News-Leader*, a local newspaper: "We are targeting businesses that supplement their income with cocaine and drug sales, just like we did with Frankie's in Rochelle." The newspaper published this statement, and shortly thereafter the city of Rochelle revoked the liquor license held by Maple Lanes, Inc., d/b/a Frankie's. In response, Maple Lanes and Kenneth George,

Sr., its president and principal shareholder (collectively referred to as "Maple Lanes"), filed suit against Messer, individually and in his official capacity as Sheriff of Ogle County, and the Ogle County Sheriff's Department, claiming that Messer violated their civil rights under 42 U.S.C. § 1983. According to the complaint, the alleged false and defamatory statement resulted in the revocation of Maple Lanes's liquor license and caused a loss of property and economic interest without due process of law and a host of other injuries to George.

The district court granted defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The court first noted that the Ogle County Sheriff's Department was an improper party based on the fact that no such governmental entity existed. The court dismissed the remaining claims against Messer because the city of Rochelle, and not Messer, actually deprived Maple Lanes of its alleged property interest, the liquor license. In essence, the district court determined that the defamatory statement made by Messer was separate and distinct from the revocation of Maple Lanes's liquor license, as it was the city and not the sheriff that revoked the license. Maple Lanes appeals only the district court's determination with respect to the claims against Messer.

We review a district court's grant of a motion pursuant to Rule 12(b)(6) *de novo*, accepting all of the well-pleaded allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff. *See Hi-Lite Prods. Co. v. American Home Prods. Corp.*, 11 F.3d 1402, 1405 (7th Cir. 1993). Such a motion challenges the sufficiency of the complaint for failure to state a claim upon which relief may be granted. Fed.R.Civ.P. 12(b)(6). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Within the state of Illinois, the Liquor Control Act of 1934 governs the revocation of liquor licenses and admin-

istrative and judicial review of such revocations. *See* Ill. Comp. Stat. § 5/1-1 *et seq*. According to the Act, the local liquor commissioner may revoke any license issued by him if he determines that the licensee has violated any of the provisions of the Act, any valid ordinance or resolution enacted by the local government, or any rule or regulation established by the local or state liquor commission. *See* 235 Ill. Comp. Stat. § 5/7-5. A liquor license may only be revoked after a public hearing and pursuant to a written order by the local commissioner. *Id.* The Act provides for administrative review of any revocation to the Illinois Liquor Control Commission, *see* 235 Ill. Comp. Stat. § 5/7-9, and for judicial review pursuant to the provisions of the Illinois Administrative Review Law, *see* 235 Ill. Comp. Stat. § 5/7-11. If a licensee is unsuccessful in his pursuit of review of the revocation of the license according to the procedures set forth in the Act, the revocation of the liquor license results in a final state court judgment against the licensee.

During oral argument and in response to a question posed by this Court, counsel for Maple Lanes represented that Maple Lanes pursued state court review of the revocation of its liquor license to an unsuccessful end. In the case before us, it is apparent that Maple Lanes seeks to attack collaterally the revocation of its liquor license by asserting a defamation case against Messer. The statement Messer made to the *Rochelle News-Leader* set in motion a proceeding that led to the valid revocation of Maple Lanes's liquor license. Maple Lanes was unsuccessful in its efforts to get the license restored through state court proceedings and now seeks the monetary value of this license as damages in its defamation suit by attempting to mount an end-run around the adverse outcome in state court.

The *Rooker-Feldman* doctrine prohibits federal courts from exercising subject matter jurisdiction over claims seeking review of state court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-

86 (1983). In assessing the applicability of the *Rooker-Feldman* doctrine, "the fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). The injury of which Maple Lanes complains—the loss of the liquor license—stems directly from the state court judgment upholding the revocation of the license. Maple Lanes's effort to portray this injury as a federal civil rights violation is insufficient to overcome the *Rooker-Feldman* doctrine. A plaintiff may not circumvent the effect of the *Rooker-Feldman* doctrine simply by casting his complaint in the form of a federal civil rights action. *See Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993). In essence, Maple Lanes seeks to undo the effect of the revocation of its liquor license by collecting an amount of damages from Messer for the alleged violation of its constitutional rights equal to the monetary value of the license. The *Rooker-Feldman* doctrine does not permit this result.

If a federal court were to award the relief Maple Lanes seeks in the form of monetary damages equal to the value of the liquor license, this result would effectively reverse the state court judgment upholding the revocation of the liquor license. There is little difference between awarding Maple Lanes the monetary value of the license and the license itself. Because the district court lacked subject matter jurisdiction in this case, we VACATE the order dismissing the complaint for failure to state a claim and REMAND with instructions to dismiss for lack of jurisdiction.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX C — JUDGMENT, MINUTE ORDER FORM AND MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED NOVEMBER 9, 1998

UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

Case Number: 98 C 50138

Maple Lanes, Inc., et al.

v.

Mel Messer, et al.

JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that defendants Rule 12(b)(6) motion to dismiss is granted and plaintiffs' complaint is dismissed in its entirety with prejudice.

Michael W. Dobbins, Clerk of Court

s/ Susan Wessman
Susan Wessman, Deputy Clerk

Date: 11/9/1998

Appendix C

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge:
Philip G. Reinhard

Case Number:
98 C 50138

Date:
11/9/1998

Case Title: –
Maple Lanes Inc., d/b/a Frankies' vs. Messer, et al.

Docket Entry:

* * *

(10) ■ [Other docket entry] For the reasons stated on the reverse, defendants' Rule 12(b)(6) motion to dismiss is granted and plaintiffs' complaint is dismissed in its entirety with prejudice.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

s/ Philip G. Reinhard

* * *

SW6 courtroom deputy's initials

* * *

Appendix C

ORDER

Plaintiffs have brought a two-count complaint against defendant Mel Messer, individually and in his official capacity as Sheriff of Ogle County, and against defendant Ogle County Sheriff's Department, pursuant to 42 U.S.C. § 1983. Plaintiffs allege Messer gave the following false statement to a local newspaper: "We are targeting businesses that supplement their income with cocaine and drugs sales. just like we did with Frankies in Rochelle." (Compl. ¶ 7) Plaintiffs allege this published defamatory statement resulted in lost revenue and caused the City of Rochelle to revoke the liquor license of Maple Lanes Inc. d/b/a Frankies ("Frankies"), resulting in a deprivation of property and economic interest without due process of law. (*Id.* ¶ 14) Defendants have moved to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6), arguing *inter alia*, that plaintiffs' complaint fails to allege defendants deprived them of a constitutionally protected property or liberty interest. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and venue is proper as the alleged events occurred in this district and division.

At the outset, the court notes that the Ogle County Sheriff's Department is an improper party because there is no such governmental entity. In addition, the court finds that plaintiffs have failed to allege a cognizable claim under §1983. The initial inquiry in §1983 suits is whether the conduct complained of deprived plaintiffs of a right, privilege or immunity protected by the Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Defamation by a state actor, without more, does not constitute

a deprivation of a property or liberty interest under the Fourteenth Amendment. *Paul v. Davis*, 424 U.S. 693, 712 (1976). To rise to the level of a constitutional injury, the defamation must involve stigmatizing information and be accompanied by a deprivation or significant alteration of a government right or benefit, or a change in plaintiffs' status. *Hadley v. County of DuPage*, 715 F.2d 1238, 1246-47 (7th Cir. 1983), *cert. denied*, 465 U.S. 1006 (1984).

Plaintiffs argue Frankies' liquor license is a governmental right, the deprivation of which without notice or a hearing violated the due process clause. However, even assuming the liquor license is a liberty or property interest within the meaning of the Fourteenth Amendment, *Cf. Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Sheriff did not revoke the license. Rather, the City of Rochelle did. (Compl. ¶ 13) Plaintiffs allege the Sheriff's defamatory statements caused the City to revoke the license, and they argue this is sufficient to impose liability against the Sheriff. However, the Seventh Circuit disagrees. *Margolis v. Tormey*, 643 F.2d 1292, 1299 (7th Cir.) (Wisconsin medical board not liable for Illinois medical board's denial of plaintiff's medical license, even though denial was based on alleged defamatory statements made by Wisconsin board; Illinois board's denial separate and distinct decision), *cert. denied*, 452 U.S. 939 (1981); *see also Fleury v. Clayton*, 847 F.2d 1229, 1231 (7th Cir. 1988) (if discipline in Illinois led to unpleasant consequences in other states, plaintiff must protest consequences in those states); *Albamonte v. Bickley*, 573 F. Supp. 77, 82 (N.D. Ill. 1983); *Larson v. Mulcrone*, 575 F. Supp. 1, 2-3 (N.D. Ill. 1982), *aff'd*, 723 F.2d 914 (1983). As the Ninth Circuit reasoned in *Cooper v. Dupnik*,

924 F.2d 1520, 1534 (9th Cir. 1991), *rev'd on other grounds*, 963 F.2d 1220 (9th Cir.) (en banc), *cert. denied*, 506 U.S. 953 (1992) (cited by plaintiffs), if a plaintiff had only to show that the state defamed him and not that the state did something else as well, the effect would be to transmute all defamation actions against state actors into §1983 actions, clearly contrary to the *Paul* Court's holding. The court need not consider defendants' remaining arguments, and plaintiffs' complaint is dismissed in its entirety with prejudice.

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AUGUST 18, 1999

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 18, 1999

Before

Hon. RICHARD A. POSNER, *Chief Judge*

Hon. JOHN L. COFFEY, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 98-4158

MAPLE LANES, INC., d/b/a FRANKIE'S
and KENNETH J. GEORGE, SR.,

Plaintiffs-Appellants,

v.

MEL MESSER, individually and in his official capacity as SHERIFF OF OGLE COUNTY and OGLE COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

Appendix D

Appeal from the United States District Court for the Northern District of Illinois, Western Division.

No. 98-C-50138

Philip G. Reinhard, Judge.

ORDER

On consideration of the petition for rehearing with suggestion for rehearing *en banc* filed in the above-entitled cause, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing with suggestion for rehearing *en banc* is DENIED.

No. 99-843

IN THE

Supreme Court of the United States

MAPLE LANES, INC. d/b/a FRANKIES
and KENNETH J. GEORGE, SR.,

Petitioners,

v.

MEL MESSER, individually and in his official
capacity as SHERIFF OF OGLE COUNTY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

On May 8, 1996, Melvin C. Messer was the duly elected Sheriff of the County of Ogle, State of Illinois. In serving the residents of Ogle County as the sheriff on that date, he made the following statement to a reporter of the *Rochelle News-Leader*: "We are targeting businesses whose employees are supplementing their income with cocaine and drug sales, just like we did with Frankies in Rochelle." Sheriff Messer's statement referenced the arrests of the assistant manager and a bartender of Frankies in Rochelle, Illinois, for the possession of drugs with the intent to sell following the entry of the premises by members of the Ogle County Sheriff's Department and the City of Rochelle Police Department, pursuant to search warrant, in March of 1996.

Following the filing of a complaint against Frankies alleging various violations of liquor ordinances and laws, a hearing was conducted by the local liquor commissioner on April 30, 1996. Pursuant to the terms of the Illinois Liquor Control Act of 1934 (235 ILCS 5/1-1, *et seq.*), a written finding of fact by the local liquor commissioner was issued on May 2, 1996. After noting that cocaine was found behind the bar in clear bags and that the assistant manager was in the possession of cannabis, a determination was made by the local liquor commissioner that the licensee failed to exercise the degree of control necessary to prevent illegal activity involving controlled substances on the premises. Those circumstances, coupled with three prior violations involving the serving of alcohol to minors on the premises, resulted in a finding by the local liquor commissioner that the liquor license of the establishment should be revoked.

Thereafter, an appeal was taken to the state liquor commission on June 19, 1996. Subsequently, on December 18, 1996, an order was entered by the Illinois State Liquor Commission affirming the decision of the local liquor commissioner to revoke the establishment's license.

A Petition for Rehearing was filed on behalf of the establishment with the State Liquor Commission on January 3, 1997. A consideration of the Petition for Rehearing by the State Liquor Commission resulted in an Order denying that request on January 8, 1997.

In accord with the laws of the State of Illinois, a Complaint was filed on behalf of the establishment seeking administrative review of the local and state proceedings in the Circuit Court of the Fifteenth Judicial Circuit, County of Ogle, on February 6, 1997. After having been pending for approximately six months, an Order of Dismissal was entered by the trial court with regard to the Complaint for Administrative Review on August 7, 1997. The terms of the Order of Dismissal entered by the Circuit Court of Ogle County on that date indicated that the dismissal was by agreement of the parties and with prejudice. The record does not reflect any additional qualifications or explanations as to the basis for the dismissal other than that it terminated the entirety of the establishment's Complaint for Administrative Review.

On May 7, 1997, a cause of action was filed in the Circuit Court of the Fifteenth Judicial Circuit, County of Ogle, on behalf of Maple Lanes, Inc., d/b/a Frankies, and Kenneth George against Sheriff Melvin Messer and the County of Ogle. The theory of liability asserted against Sheriff Messer in the state action was defamation arising from the statements made to the newspaper reporter and published in the newspaper on May 9, 1997.

On July 1, 1997, an Order of Transfer was entered by the presiding judge of the Fifteenth Judicial Circuit, changing the venue in which the state action would proceed from the Circuit Court of Ogle County to the Circuit Court of Lee County. The matter was assigned at the time of the transfer to the Honorable Thomas Magdich.

Subsequently, on May 8, 1997, a First Amended Complaint at Law was filed for the purpose of adding as a party defendant in the state action the *Rochelle News-Leader*. The state action remains pending against both Sheriff Messer and the newspaper at this time.

During the pendency of the action proceeding in the Illinois state court, a cause of action was filed on behalf of Maple Lanes, Inc., d/b/a Frankies, and Kenneth George, pursuant to Section 1983 of the Civil Rights Act of 1964 in the United States District Court for the Northern District of Illinois, Western Division, against Sheriff Melvin Messer. Upon motion of the defendant pursuant to Rule 12(b)(6), an Order of Dismissal was entered by the Honorable Philip Reinhard on November 9, 1998.

From that Order of Dismissal, an appeal was taken by Maple Lanes, Inc., d/b/a Frankies, and Kenneth George to the United States Court of Appeals for the Seventh Circuit. After review of the pleadings submitted and oral argument by counsel, a decision by way of published opinion was forthcoming from the United States Court of Appeals for the Seventh Circuit on July 27, 1999. It is as a result of the decision of the United States Court of Appeals for the Seventh Circuit that this Petition for Writ of Certiorari to the Supreme Court of the United States arises.

REASONS FOR DENYING THE WRIT

I.

APPROPRIATE APPLICATION OF THE ROOKER-FELDMAN DOCTRINE WARRANTS A DENIAL OF THE PETITION FOR WRIT OF CERTIORARI

In petitioning this Honorable Court for a Writ of Certiorari seeking the review of the opinion of the United States Court of Appeals for the Seventh Circuit in this matter, the petitioners claim that there was an unwarranted extension of the Rooker-Feldman doctrine as it was applied to the facts presented for review in the case at bar. In synthesizing the petitioners' position, this asserts that the Rooker-Feldman doctrine was applied inappropriately for the following three reasons: there was not an adequate adjudication of the plaintiff's administrative review in the Illinois state court; there was no involvement in the administrative review process of the defendant in this action, Sheriff Melvin Messer; and there was no symmetry between the matters included in the review process in the Illinois courts and the plaintiffs' action filed pursuant to Section 1983 of the Civil Rights Act.

Contrary to the arguments articulated by the plaintiffs, the interpretation and the application of the Rooker-Feldman doctrine by the United States Court of Appeals for the Seventh Circuit were in accord with both the rationale espoused by the United States Supreme Court in the formulation of the Rooker-Feldman doctrine, as well as the decisions of the twelve federal courts of initial appellate review. Each of the three areas of concern raised by the plaintiffs has been reviewed previously by numerous courts

of review, and consistently has been decided contrary to the positions articulated by the plaintiffs in this action.

At its core, the Rooker-Feldman doctrine is a recognition of the principle that the lower federal courts generally do not have the power to exercise appellate review over state court decisions. *Kamilewicz v. Bank of Boston Corporation*, 92 F.3d 506 (CA 7 1996). The Rooker-Feldman doctrine precludes not only adjudications by federal district courts of the state's highest court, but also the decisions of its lowest courts. *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192 (CA 4 1997).

The foundation of the Rooker-Feldman doctrine is rooted in two statutory bases: first, 28 U.S.C. § 1257 which limits federal review of state court proceedings to the United States Supreme Court; and second, 28 U.S.C. § 1331 which provides that federal district courts are courts of original jurisdiction. *Powell v. Powell*, 80 F.3d 464 (CA 11 1996). In addition to the formal justification for the Rooker-Feldman doctrine as indicated by the aforementioned statutory provisions, there also exists justification based upon the concept that this doctrine affords respect for the decision-making process of state courts. *Gurarino v. Larsen*, 11 F.3d 1151 (CA 3 1993).

With regard to the plaintiffs' concern over the lack of total symmetry between the issues raised in the state court matter and the issues raised in the civil rights action, the clear and the consistent rationale developed by the federal courts of review illustrates that no such condition precedent is mandated for the application of the Rooker-Feldman doctrine. There is no question that the state court proceeding and the federal court proceeding need not be directly on point

for the Rooker-Feldman doctrine to be applicable. *Kamilewicz*, 92 F.3d at 510. Given that fact, a plaintiff may not escape the jurisdictional bar of the Rooker-Feldman doctrine by merely refashioning the attack on the state court judgment as a Section 1983 claim. *Bechtold v. City of Rosemount*, 104 F.3d 1062 (CA 8 1997).

The standard established by the United States Supreme Court in determining whether the application of the Rooker-Feldman doctrine is warranted is premised upon a determination as to whether the state court action and the federal court action are "inextricably intertwined." In discussing the scope of that standard, the United States Supreme Court has stated:

> The federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

Penzoil Company v. Texaco, 481 U.S. 1, 107 S. Ct. 1519 (1987).

In creating such a jurisdictional obstacle to collateral review of state court decisions, the Rooker-Feldman doctrine mandates an examination of the gravamen of the plaintiffs' complaint rather than the pleadings of the plaintiffs. In actions filed pursuant to Section 1983, such an analysis requires the court to examine the complaint to determine

whether the litigant challenges the underlying procedure as unconstitutional, or instead, seeks review of the state court judgment in the case. *Young v. Murphy*, 90 F.3d 1225 (CA 7 1996).

Notwithstanding the linguistics of the plaintiffs' complaint, the gravamen of the plaintiffs' § 1983 action concerns the revocation of the liquor license. As succinctly stated by the United States Court of Appeals for the Seventh Circuit, the § 1983 action filed on behalf of the plaintiff is, in essence, an attempt to undo the effect of the ratification of its liquor license by collecting an amount of damages from this defendant for the alleged violation of his constitutional rights. Hence, the claimed loss suffered by the plaintiff arose not from the alleged defamatory remarks of the defendant, but from the actual loss of the ability to generate revenue due to the revocation of the liquor license.

It is exactly that type of scenario which creates the requisite nexus between the state court action and the federal court action for the Rooker-Feldman doctrine to be applicable. The identification of the connection between the two claims and the application of the Rooker-Feldman doctrine as a means to limit the federal district court's jurisdiction over this matter by the United States Court of Appeals for the Seventh Circuit were both reasonable and warranted given the circumstances presented for review.

Secondly, the fact that the defendant in the case at bar was not a participant in the state court action does not obviate the applicability of the Rooker-Feldman doctrine. The plaintiffs' reliance upon the case of *Johnson v. DeGrandy*, 512 U.S. 997, 114 S. Ct. 2647 (1994), to support that proposition both misconstrues the United States Supreme

Court's analysis in that case and places an unwarranted restriction on the scope of the Rooker-Feldman doctrine.

In *Johnson*, this Honorable Court was confronted with a situation where the United States Government sought relief from a decision of the Florida Supreme Court in the United States District Court for the Northern District of Florida. Significantly, the federal government had not been a participant in the prosecution of the action concerning the adequacy of representation of certain minorities in the Florida legislature in the state court action. *Johnson*, 114 S. Ct. at 2654.

In reaching the determination that the Rooker-Feldman doctrine did not bar the federal government's action in the district court, the United States Supreme Court stated:

> It (the United States) was in no position to ask this court to review the state court's judgment and has not directly attacked it in this proceeding.
>
> * * *
>
> The United States merely seeks to litigate its Section 2 case for the first time, and the government's claims, like those of the private plaintiffs, are properly before the federal courts.

Johnson, 114 S. Ct. at 2654

The situation presented to this Honorable Court in the case at bar is diametrically opposed to that which was presented at the time of the Supreme Court's consideration of the *Johnson* case. The significant difference in the case at

bar is that the party seeking relief in the case at bar was a participant in both the administrative matters as well as in the state court action. Moreover, it was the result of those proceedings which was detrimental to the interests of the plaintiffs which actually give rise to the relief sought by the plaintiffs in their action filed pursuant to § 1983 of the Civil Rights Act.

Contrary to the plaintiffs' argument, it is well accepted that the Rooker-Feldman doctrine is applicable even in the absence of the defendant from a state court proceeding where the plaintiff was given an opportunity to press the claim. *Powell*, 80 F.3d at 468. In determining that it is irrelevant as to whether the same defendants are in both the state case and the federal case, it appears that the courts of review have eliminated the prospect of a plaintiff seeking to avoid the applicability of the Rooker-Feldman doctrine merely by changing the *dramatis personae*. *Newman v. State of Indiana*, 129 F.3d 937 (CA 7 1997).

The issue of Sheriff Messer's lack of involvement in the state court action is nothing more than a "red herring" to distract the United States Supreme Court from focusing upon the primary issue in this case. The primary issue is the attempt by the plaintiffs to obtain damages in a federal civil rights action for revenue lost as a result of the revocation of their liquor license resulting from judicial activities at the state level. It is exactly that type of review of a state court decision by a federal court of original jurisdiction that the Rooker-Feldman doctrine is intended to eliminate.

Finally, the suggestion of the plaintiffs that there was not an adjudication made by the Illinois state court relating to the administrative review of their liquor license revocation is contrary to the documentation contained in the state court file.

Following the revocation of the plaintiffs' liquor license by the local liquor commissioner, as well as an order affirming the local commissioner's finding by the state agency, the plaintiffs filed a complaint for administrative review in the Circuit Court of the Fifteenth Judicial Circuit, County of Ogle, on February 6, 1997. After pending for approximately six months, an Order of Dismissal *with prejudice* was entered by the trial court on the plaintiffs' complaint for administrative review on August 7, 1997.

Under Illinois law, a dismissal with prejudice is deemed to be on the merits of the plaintiffs' claim, and is conclusive of the rights of parties as if the matter had been tried and result by final judgment adverse to plaintiff. *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 648 N.E.2d 1020 (1st Dist. 1995). That rationale is consistent with the spirit of Rule 273 of the Illinois Supreme Court which connotes that a dismissal with prejudice, unless otherwise indicated by order or by statute, operates as an adjudication upon the merits of the case.

Regardless of the plaintiffs' contentions, judicial review of the revocation of the plaintiffs' liquor license was undertaken pursuant to the applicable provisions of the Illinois Administrative Review Act. Further, a final order with regard to the plaintiffs' complaint for administrative review was entered by the presiding court on August 7, 1997.

In light of that fact, there can be no question that a final judgment was entered by the state court before which the plaintiffs' action was filed. The only legal affect of the dismissal of the plaintiffs' complaint for administrative review was to affirm the prior revocation of the plaintiff's liquor license through the local and the state administrative proceedings.

If the plaintiff wished to seek further review of that dismissal, the appropriate form should have been the Illinois Appellate Court. In correctly recognizing that fact, the United States Court of Appeals for the Seventh Circuit identified the plaintiffs' attempt to circumvent the review process by filing the federal action pursuant to Section 1983 of the Civil Rights Act. Because the federal district court did not possess the requisite jurisdiction to serve in the capacity of a court of review, the United States Court of Appeals for the Seventh Circuit correctly utilized the Rooker-Feldman doctrine to mandate the dismissal of the federal claim.

II.

DIRECT CAUSE, NOT PROXIMATE CAUSE, FOR LOSS OF A PROPERTY RIGHT IS THE UNIFORM STANDARD UTILIZED TO ASSESS SATISFACTION OF "STIGMA-PLUS" TEST IN SECTION 1983 ACTIONS

In addition to the request for review of the application of the Rooker-Feldman doctrine, the plaintiffs contend that this action also presents the United States Supreme Court with an opportunity to establish a uniform interpretation and application of the "stigma-plus" analysis in actions where the plaintiff asserts a loss of a protected property right in an action filed pursuant to Section 1983 of the Civil Rights Act of 1964. The plaintiffs premise their request for review upon the belief that there is a divergence among the various circuits regarding the type of "cause" needed by the state actor who promulgated the alleged defamatory remarks to satisfy the "plus" portion of the stigma-plus analysis. Although the defendant certainly recognizes the role of this Honorable Court in insuring application of federal laws and principles, it is respectfully submitted that no such lack of uniformity

exists with regard to the interpretation and the application of the "stigma-plus" analysis in non-employment situations.

Contrary to the plaintiffs' position, numerous judicial circuits which have interpreted and have applied the "stigma-plus" analysis in Section 1983 cases involving non-employment-related issues have been steadfast in their requirement of a direct causal connection between the alleged state action and the loss of the protected property right. *Margoles v. Formey*, 643 F.2d 1292 (CA 7 1981); *Wade v. Goodwin*, 843 F.2d 1150 (CA 8 1988); *Castaneda v. United States Department of Agriculture*, 807 F.2d 1478 (CA 9 1987); *Phelps v. White Eagle-Beacon*, 886 F.2d 1262 (CA 10 1989); *Cypress Insurance Company v. Clark*, 144 F.3d 1435 (CA 11 1998).

In each of the aforementioned cases, the respective courts of review have premised the standard requiring direct injury by the state actor to satisfy the "stigma-plus" analysis upon this Honorable Court's discussion of the issue in the case of *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155 (1976).

As stated in Paul, defamatory publications by a state official, however seriously they may harm someone, do not deprive that person of any interest protected by the due process clause. *Paul*, 96 S. Ct. at 1165. At best, such situations create the potential for a viable defamation action against the public official by the aggrieved party before a state tribunal.[1]

1. It should be noted that at the time of the preparation of this pleading, there is pending a cause of action asserted on behalf of the plaintiffs against the Defendant, Sheriff Melvin Messer, based upon a theory of defamation in the Circuit Court of the Fifteenth

(Cont'd)

In support of the contention that there exists a schism among the circuits with regard to the application of the "stigma-plus" analysis in non-employment-related situations, the plaintiffs solely rely upon the case of *San Jacinto Savings & Loan v. Kacal*, 928 F.2d 697 (CA 5 1991). It is the plaintiffs' mistaken belief that the rationale utilized by the United States Court of Appeals for the Fifth Circuit in deciding *Kacal* requires only proximate cause rather than direct cause between the state action and the deprivation of the protected interest. Notwithstanding the plaintiffs' argument, closer scrutiny of the opinion generated by the Fifth Circuit in *Kacal* indicates otherwise.

In *Kacal*, the aggrieved party asserted that the municipal defendant violated her liberty and property interests in the operation of her business by allegedly defaming her and harassing her customers. *Kacal*, 928 F.2d at 700. In determining that the situation at bar satisfied the "stigma-plus" analysis, the Fifth Circuit focused upon the actions of the municipal actor in conjunction with the alleged defamatory remarks.

In reviewing the Record on Appeal, the Fifth Circuit noted that it contained evidence that the municipal police officers continually harassed the young and easily intimidated patrons of the aggrieved party's business, thereby causing a decline in the business' patronage. *Kacal*, 928 F.2d at 703. Given the actions of the municipal officers resulting

(Cont'd)

Judicial Circuit, County of Lee, before the Honorable Thomas Magdich under Case No. 97 L 30, entitled *Maple Lanes, Inc., d/b/a Frankies, and Kenneth J. George, Sr. v. Mel Messer, individually and in official capacity as Sheriff of Ogle County, and News Media Corporation, d/b/a Rochelle News Leader.*

in the harassment of the claimant's patrons in front of the business, the United States Court of Appeals for the Fifth Circuit stated:

> Kacal does not and need not show that the alleged defamatory remarks actually caused the decline in patronage. Instead, it is sufficient to show that the officer's harassment of Kacal's patrons was, as the summary judgment evidence indicates, the *direct* cause of the failure of her business.

Kacal, 928 F.2d at 703 (emphasis added)

Given the analysis undertaken by the United States Court of Appeals for the Fifth Circuit in *Kacal*, it is readily apparent that it, like the other circuits, utilized a direct cause standard in applying the "stigma-plus" test. In light of that fact, it is difficult to discern the nature of the conflict among the circuits in the interpretation and the application of the "stigma-plus" analysis in cases of this nature as described in the plaintiffs' petition.

It is plainly obvious that the rationale utilized by the district court in granting the defendants' Motion to Dismiss was consistent not only with the application of the "stigma-plus" analysis by the United States Court of Appeals for the Seventh Circuit as articulated in the *Margoles* case, but also consistent with the same rationale utilized by the various judicial circuits in applying the same legal principle. Contrary to the plaintiffs' belief, there does not exist a conflict among the circuits with regard to the interpretation and the application of the "stigma-plus" test in non-employment scenarios where a claimant has filed an action pursuant to Section 1983 of the Civil Rights Act of 1964. Given the lack

of any such conflict, there exists no basis to support the plaintiffs' request contained in their petition for review of this issue.

CONCLUSION

Neither the application of the Rooker-Feldman doctrine by the United States Court of Appeals for the Seventh Circuit nor the application of the "stigma-plus" analysis by the district court was in derogation of the well-established legal principles governing each issue. To the contrary, the decision-making processes exercised by both courts conformed with the longstanding legal principles enunciated by the United States Supreme Court regarding both the Rooker-Feldman doctrine and the "stigma-plus" analysis. For those reasons, the Defendant, Sheriff Melvin Messer, respectfully requests that the United States Supreme Court deny the plaintiffs' Petition for a Writ of Certiorari.

Respectfully submitted,

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